

Effective 5/10/2016

34A-6-103 Definitions -- Unincorporated entities -- Joint employers -- Franchisors.

(1) As used in this chapter:

- (a) "Administrator" means the director of the Division of Occupational Safety and Health.
- (b) "Amendment" means such modification or change in a code, standard, rule, or order intended for universal or general application.
- (c) "Commission" means the Labor Commission.
- (d) "Division" means the Division of Occupational Safety and Health.
- (e) "Employee" includes any person suffered or permitted to work by an employer.
- (f) "Employer" means:
 - (i) the state;
 - (ii) a county, city, town, and school district in the state; and
 - (iii) a person, including a public utility, having one or more workers or operatives regularly employed in the same business, or in or about the same establishment, under any contract of hire.
- (g) "Federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec. 105, of the federal government.
- (h) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- (i) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- (j) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- (k) "Hearing" means a proceeding conducted by the commission.
- (l) "Imminent danger" means a danger exists which reasonably could be expected to cause an occupational disease, death, or serious physical harm immediately, or before the danger could be eliminated through enforcement procedures under this chapter.
- (m) "National consensus standard" means any occupational safety and health standard or modification:
 - (i) adopted by a nationally recognized standards-producing organization under procedures where it can be determined by the administrator and division that persons interested and affected by the standard have reached substantial agreement on its adoption;
 - (ii) formulated in a manner which affords an opportunity for diverse views to be considered; and
 - (iii) designated as such a standard by the secretary of the United States Department of Labor.
- (n) "Person" means the general public, one or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers, and the state and its political subdivisions.
- (o) "Publish" means publication in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (p) "Secretary" means the secretary of the United States Department of Labor.
- (q) "Standard" means an occupational health and safety standard or group of standards which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary to provide safety and healthful employment and places of employment.
- (r) "Unincorporated entity" means an entity organized or doing business in the state that is not:
 - (i) an individual;
 - (ii) a corporation; or
 - (iii) publicly traded.
- (s) "Variance" means a special, limited modification or change in the code or standard applicable to the particular establishment of the employer or person petitioning for the modification or change.

- (t) "Workplace" means any place of employment.
- (2)
 - (a) For purposes of this chapter, an unincorporated entity that is required to be licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to be the employer of each individual who, directly or indirectly, holds an ownership interest in the unincorporated entity.
 - (b) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption under Subsection (2)(a) for an individual by establishing by clear and convincing evidence that the individual:
 - (i) is an active manager of the unincorporated entity;
 - (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated entity; or
 - (iii) is not subject to supervision or control in the performance of work by:
 - (A) the unincorporated entity; or
 - (B) a person with whom the unincorporated entity contracts.
 - (c) As part of the rules made under Subsection (2)(b), the commission may define:
 - (i) "active manager";
 - (ii) "directly or indirectly holds at least an 8% ownership interest"; and
 - (iii) "subject to supervision or control in the performance of work."
- (3) For purposes of determining whether two or more persons are considered joint employers under this chapter, an administrative ruling of a federal executive agency may not be considered a generally applicable law unless that administrative ruling is determined to be generally applicable by a court of law, or adopted by statute or rule .
- (4)
 - (a) For purposes of this chapter, a franchisor is not considered to be an employer of:
 - (i) a franchisee; or
 - (ii) a franchisee's employee.
 - (b) With respect to a specific claim for relief under this chapter made by a franchisee or a franchisee's employee, this Subsection (4) does not apply to a franchisor under a franchise that exercises a type or degree of control over the franchisee or the franchisee's employee not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

Amended by Chapter 370, 2016 General Session